

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 16-11700-smb

4 Case No. 16-12239-smb

5 Adv. Case No. 16-01248-smb

6 - - - - - x

7 In the Matter of:

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9 GAWKER MEDIA, LLC,

10

11 Debtor.

12 - - - - - x

13 In the Matter of:

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15 NICHOLAS G.A. DENTON,

16

17 Debtor.

18 - - - - - x

19 TERRY BOLLEA,

20 Plaintiff

21 v.

22 NICHOLAS G.A. DENTON,

23 Defendant.

24 - - - - - x

25

1 U.S. Bankruptcy Court  
2 One Bowling Green  
3 New York, New York  
4

5 January 26, 2017

6 10:45 AM  
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8 B E F O R E :

9 HON STUART M. BERNSTEIN

10 U.S. BANKRUPTCY JUDGE  
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1 HEARING RE: Case Conference

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3 HEARING RE: First Interim Fee Application of Deloitte

4 Financial Advisory Services LLP for Compensation for

5 Services Rendered and Reimbursement of Expenses Incurred as

6 Financial Advisor for the Official Committee of Unsecured

7 Creditors for the Period from June 28, 2016 through

8 September 30, 2016

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10 HEARING RE: Order to Show Cause Directing Filing of

11 Statement Pursuant to Federal Bankruptcy Rule 2019 as a

12 Condition to being Heard

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14 HEARING RE: Case Conference

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16 HEARING RE: Pre-Trial Conference

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25 Transcribed by: Nicole Yawn

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6 BY: DANIEL H. TABAK, ESQ.

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1 P R O C E E D I N G S

2 THE COURT: Gawker?

3 (Pause)

4 MR. GALARDI: Yes. Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. GALARDI: Gregg Galardi, of Ropes & Gray, on  
7 behalf of Gawker Media. The first matter on the agenda is a  
8 case conference, and to not allow Mr. Denton's counsel to go  
9 unnoticed, I thought maybe we would do this as a joint case  
10 conference.

11 THE COURT: That's fine.

12 MR. GALARDI: All right. With respect to the  
13 Gawker matter, which obviously has the impact on  
14 Mr. Denton's case, as Your Honor is aware, we confirmed the  
15 Plan in accordance with Your Honor's confirmation order.  
16 And Mr. Holden is in the courtroom today. We made  
17 distributions before year-end on all of the significant  
18 claims.

19 As I had explained to Your Honor in the context of  
20 confirmation, those were important for us to reap certain  
21 tax benefits. With those distributions made, there was only  
22 one condition to the effective date. Your Honor asked me at  
23 the end of December why wouldn't we go effective. And I  
24 mentioned that there is this agreement with Unamota (ph)  
25 that was the asset purchase agreement on agreeing on a tax

1 allocation.

2 To date, we have not yet agreed with them on a tax  
3 allocation. We've had two or three meetings with them, and  
4 there's a minor issue. And I think we'll either resolve it  
5 or we'll go forward effective, filing our tax allocation.  
6 They may have a disagreement with it.

7 More importantly, Your Honor, with making those  
8 year-end payments, the estate is going to be filing its tax  
9 returns in both the United States and Hungary, based on an  
10 allocation. Hopes to do so by no later than February 15th.  
11 And so, we believe we will go effective and then make  
12 distributions, the balance of the distributions, which  
13 really are to the equity, which then affects Mr. Denton's  
14 case, by the end of February.

15 So we -- there is really nothing holding up the  
16 confirmation, other than that effective date condition,  
17 which we, frankly, can waive, but we think it's better to  
18 try to resolve that before we file our tax returns so  
19 there's no inconsistency. We have met with the Hungarian  
20 tax -- with the Hungarian Tax Counsel (ph). And they are  
21 preparing the returns.

22 We're preparing the returns. And I think then  
23 there's adequate reserves, as we talked about at  
24 confirmation. So the claims will be paid. It's really the  
25 mechanics of making distributions to the shareholders.

1 That's my case report.

2 THE COURT: All right. And I would assume, in  
3 Denton, it is waiting for the distribution to file the plan.

4 MR. USATINE: Yeah, it's -- Your Honor, sorry.  
5 Warren Usatine, Cole Schotz, on behalf of Mr. Denton.  
6 That's correct, and I think that we have made the  
7 determination for both cost effectiveness, tax efficiency,  
8 and speed to conclude Mr. Denton's case by way of presenting  
9 Your Honor with a motion to dismiss. The purpose of the  
10 bankruptcy, obviously, having been eliminated by virtue of,  
11 not only the Bollea settlements, but the settlements of the  
12 other contingent litigation creditors that were on.

13 THE COURT: He's not a defendant in any of the  
14 litigations?

15 MR. USATINE: He is not a defendant in any other  
16 litigation. He has modest remaining creditors left that,  
17 obviously, once he gets his distribution, will have more  
18 than sufficient funds to satisfy, including his mortgage, if  
19 he chooses to pay it off.

20 THE COURT: Okay. What happened with the  
21 apartment?

22 MR. USATINE: Sorry?

23 THE COURT: What happened with the apartment?

24 MR. USATINE: He remained in the apartment because  
25 shortly after we were here, the Bollea settlement occurred

1 and it became clear that he was going to get a distribution  
2 sufficient.

3 THE COURT: Okay. All right.

4 MR. USATINE: It had been listed, but --

5 THE COURT: All right. Before we leave that, let  
6 me give you a conference date some time in March.

7 MR. GALARDI: Sure.

8 THE COURT: By then, you should be able to tell me  
9 when you can wrap this case up.

10 MR. GALARDI: Yes.

11 THE COURT: Say March 22 at 10 o'clock. Okay?

12 MR. GALARDI: March --

13 THE COURT: Well, you still have that outstanding  
14 litigation with Johnson & --

15 MR. GALARDI: Right. And let me -- March 22.

16 THE COURT: It doesn't matter, because I realize  
17 the case can't be closed.

18 MR. GALARDI: Yeah. Well, no, I mean, we still  
19 have -- Your Honor, we have outstanding tax claims and  
20 objections. So we'll still be doing post-confirmation  
21 objections. But we do believe we'll be effective by then.

22 THE COURT: All right. Well, March 22 is about 60  
23 days off. That's a little less. So you can report it that  
24 way.

25 MR. USATINE: We hope to be here before then on

1 our motion.

2 THE COURT: Okay.

3 MR. GALARDI: May I just ask? I think that may be  
4 a day that's a conflict. Is there any chance there's a day  
5 before that day, somewhere --

6 THE COURT: I mean, the day's not written in  
7 stone.

8 MR. GALARDI: If not, I can --

9 THE COURT: I just picked it off the calendar.

10 MR. GALARDI: Okay.

11 THE COURT: Let me see.

12 MR. GALARDI: Would you like us to contact --

13 THE COURT: March 28th?

14 MR. GALARDI: Let me check both, and we'll see.

15 THE COURT: All right.

16 MR. GALARDI: I'll call this afternoon to confirm  
17 one of those days. I appreciate it.

18 THE COURT: Okay.

19 MR. GALARDI: Your Honor, then the next matters on  
20 the agenda -- the first one is the interim application of  
21 Deloitte. That's not my matter. Counsel for Deloitte is  
22 here.

23 THE COURT: All right.

24 MS. FREKLA: Good morning, Your Honor. Elise  
25 Frejka, Frejka PLLC, appearing on behalf of Deloitte

1 Financial Advisory Services, in connection with their  
2 services as financial advisor to the Committee. There have  
3 been no objections filed to the application. I have been  
4 authorized to represent that the Committee does consent to  
5 the relief.

6 The period covered by this interim application is  
7 June 28th, 2016 through September 30th, 2016. The amount  
8 sought is \$652,130.50 and expenses of \$671.70. We were  
9 slightly off schedule from the other professional fee  
10 applications that you heard about a month ago because of the  
11 issues with the supplemental retention order for Deloitte.

12 THE COURT: All right. And what did I do with the  
13 other fee applications?

14 MR. GALARDI: Your Honor, I think you left a 5  
15 percent holdback.

16 THE COURT: All right. I'll do the same thing,  
17 then, 100 percent of the expenses, 95 percent of the fees,  
18 subject to review at the end of the case.

19 MS. FREJKA: Thank you. I will submit an order --

20 THE COURT: Submit an order.

21 MS. FREJKA: -- consistent with what you marked on  
22 the last order that was submitted for the other  
23 professionals.

24 THE COURT: All right. Okay.

25 MS. FREJKA: Thank you.

1 MR. GALARDI: And then the only remaining matter  
2 on the agenda, Your Honor, is Your Honor has ordered to show  
3 cost of X.P. vehicles.

4 THE COURT: Right.

5 MR. GALARDI: Your Honor, we did submit the  
6 declaration of Mr. Martin with a supplement. I think Your  
7 Honor received something --

8 THE COURT: Apparently, that triggered a response  
9 that by the name of the copywriter. We received an email  
10 yesterday.

11 MR. GALARDI: Oh, did you receive it? I haven't  
12 received it.

13 THE COURT: We haven't been -- we haven't been  
14 (indiscernible) emails.

15 MR. GALARDI: Well, and I got triggered an email  
16 personally as well, but nothing of the response, other than  
17 teg (ph) money.

18 THE COURT: Let me ask if there is anybody in  
19 court today or on the phone who wants to be heard in  
20 connection with the Court's order to show cause relating to,  
21 among others, X.P. vehicles.

22 Hearing no response, this is the Court's ruling.  
23 By order dated January 3, 2017, hereinafter the order, which  
24 includes a background discussion leading up to the order,  
25 the Court directed public interest group and X.P. Vehicles

1 Task Force/X.P. Group/X.P. Vehicles/X.P. Alliance and CODE  
2 RED, CODE RED being in all caps, and any similar groups,  
3 collectively, the groups, to show cause why an order should  
4 not be entered directing the groups or any member of the  
5 group to comply with Federal Bankruptcy Rule 2019 and in the  
6 event of non-compliance, denying the groups the right to be  
7 heard pursuant to Federal Bankruptcy Rule 2019(e)(2)(A).

8 The order also provided that any response or any  
9 other submissions by any group member must be signed and  
10 filed by an attorney authorized to practice before this  
11 Court. The Court received an unsigned response, which did  
12 not deal with the issues raised by the order. Instead, it  
13 contended, among other things, that the information the  
14 Court had requested could be extracted from certain link  
15 documents to which the Court was directed, and the groups  
16 had a right to distribute their evidence regarding certain  
17 conspiracies through the servers used by Prime Clerk, the  
18 entity retained by the debtors pursuant to 28 U.S.C. Section  
19 Sign (ph) 156(c).

20 Rule 2019 requires, in substance, that every group  
21 or committee that consists of or represents multiple  
22 creditors or equity holders must disclose the name and  
23 address of each member and the member's economic interest in  
24 the bankruptcy case. In the event of non-compliance, the  
25 Court may, among other things, quote, "refuse to permit the

1 entity, group, or committee to be heard, or to intervene in  
2 the case." Federal Bankruptcy Rule 2019(e)(2)(A).

3 The groups have alleged that Gawker, the debtor  
4 herein, has participated in a conspiracy that has caused  
5 them damage. And they are, therefore, creditors, or assert  
6 allege to be creditors, although the Court has struck the  
7 only claim that was filed or claims that were filed.  
8 Accordingly, they are subject to Federal Bankruptcy Rule  
9 2019 and must comply with its precondition -- comply with it  
10 as a precondition to being heard.

11 In addition, because the groups can only appear  
12 through counsel, their counsel must sign any submissions.  
13 In other words, a young lawyer cannot represent their  
14 interests. Accordingly, the groups are directed to comply  
15 with Federal Bankruptcy Rule 2019 within 7 days of today.  
16 And the statement or statements must be signed by attorneys  
17 authorized to appear in the court. In the event one or more  
18 members of the groups do not comply and the debtor certifies  
19 that non-compliance, the debtor may submit an order in  
20 accordance with Federal Bankruptcy Rule 2019(e)(2)(A),  
21 denying the groups the right to be heard or intervene in the  
22 cases.

23 Thank you.

24 MR. GALARDI: Your Honor, that concludes the  
25 matter for Gawker. Thank you very much.

1 THE COURT: Oh, before you go, I had some stuff on  
2 the Denton calendar, some continuing adversaries.

3 MR. USATINE: Correct, I think there's a --  
4 there's a conference in the Bollea v. Denton 523 action.

5 THE COURT: Shouldn't we mark that off at this  
6 point?

7 MR. USATINE: Yeah, we --

8 MR. GALARDI: Yes, Your Honor.

9 MR. USATINE: Yes.

10 THE COURT: Why don't you -- okay. What -- is  
11 that an adversary in this court?

12 MR. USATINE: It is.

13 THE COURT: All right. So just submit an order  
14 closing the adversary.

15 MR. USATINE: Well, I think we can probably do  
16 that in conjunction with the approval of the settlement that  
17 we've struck that we'll present to Your Honor for  
18 consideration. I think it's --

19 THE COURT: Oh, I thought -- I thought that there  
20 was --

21 MR. USATINE: We had -- we had our own separate --

22 THE COURT: Did you have a separate settlement?

23 MR. USATINE: We have a separate settlement.

24 THE COURT: Okay.

25 MR. TABAK: Daniel Tabak, on behalf of -- from

1 Cohen & Gresser, on behalf of Mr. Bollea. Yes, Your Honor,  
2 we have a separate settlement that will need to be approved  
3 by Your Honor. And once that's approved, the adversary  
4 proceeding can be dismissed or withdrawn.

5 THE COURT: Okay. I'll adjourn the pretrial to  
6 March 28th at 10 o'clock.

7 MR. TABAK: Thank you, Your Honor.

8 THE COURT: Thanks.

9 MR. USATINE: Thank you, Your Honor.

10 THE COURT: I'll also adjourn the case conference  
11 to then, Mr. Usatine.

12 MR. USATINE: Thank you. Thank you, Judge.

13 (Whereupon, these proceedings were concluded at 10:57  
14 AM)

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1	I N D E X	
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C E R T I F I C A T I O N

I, Nicole Yawn certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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